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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,628	01/25/2001	George B. Diamond	P/2790-71	5333
2352	7590	08/13/2004	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/769,628	DIAMOND ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steven L. Weinstein	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-32 is/are pending in the application.
- 4a) Of the above claim(s) 6-14 and 23-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 15, & 17-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-5, 15 and 17-22 are rejected under 35USC112, first paragraph as being non-enabling for the reasons given in the Office actions mailed 4/4/03 and 11/26/03.

That is, the claim does not recite the dimensional and functional relationships of the elements necessary to define the invention as disclosed in the specification. That is, as disclosed, it appears that the invention's contribution to the art of record such as Diamond (5,804,237) is to provide a concave flexing panel such as Diamond has, but provide an initial headspace volume when the panel is concave that is greater than the head space volume taught by Diamond, so that the greater head space can absorb more pressure, thus eliminating the use of an exterior counter pressure. As disclosed, this appears to be accomplished in the elected embodiment by providing a top end that has raised areas and the concave portion and raised areas are dimensioned to provide an initial head space that is greater than if these elements and their structural and dimensional relationships were not present (presumably for the same given amount of product). Thus, the increased headspace volume would allow for increased absorption of internal pressure, reducing the need for an outer, counter pressure. Without some functional, dimensional relationship between the raised portion and the concave portion and their relationship to the contents of the containers, then the raised portion on an upper surface is nothing more than any conventional rigidifying element in an end. The claims are silent as to the structural elements and their dimensional and functional

relationship. Note that claim 1 does not clarify what the phrase that the top end is extending "inwardly" means. Does this mean-inwardly, away from-the side wall? Also, the phrase "raised portion" is still uncertain-"raised" relative to what? In the third paragraph, was the intent to recite-top end-instead of just one point on the top end, or is arranged circumferentially around the top end.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 15, and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond et al (5,804,237) in view of Knize (3,799,388), further in view of Creegan (3,105,765) and Shepard (4,560,080), further in view of Wilkinson et al (4,467,933), Malmquist (1,499,239), Jones (4,010,867), and Pettit et al (3,704,140), and Rayzal (3,814,279) for the reasons given in the Office action mailed 11/26/03. Wilkinson et al, Malmquist, Jones, Pettit et al and Royal are further evidence of ends with raised areas and concave areas for panel flexing due to pressure changes.

Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Saunders (3,608,774) for the reasons given in paper no. 9.

All of applicant's remarks have been fully and carefully considered but are not found to be convincing. Contrary to what is urged, the art taken, as a whole would fairly

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teach raised areas and concave portions, with many, if not all, of the references teaching both.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af  
August 11, 2004

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
8/12/04